

REMARKS

This Amendment and Response to Office Action is made in response to the examiner's office action dated June 3, 2004. The examiner's comments have been carefully considered, and are addressed in turn in the following paragraphs.

Inventorship

The examiner has pointed out that the inventor name indicated on the application data sheet is different from the name on the Declaration of Inventor.

At the time the Declaration was filed, in response to the Notice to File Missing Parts of Application, applicant submitted an explanation as to why the inventor name on the declaration is different from the inventor name on the original application papers. It appears that that explanation was not recorded in the image file wrapper. A copy of the explanation as filed on April 16, 2004 is attached hereto. The explanation states:

The enclosed Declaration and Power of Attorney is signed by Ira Clevenger as the inventor of the 'FUGACHEE FUJI'. Shou Shia Wang was originally identified as inventor in the application as filed. It has since been determined that Ms. Wang is not an inventor, and that Mr. Clevenger is in fact the original, sole and first inventor of the new variety. This error was made without deceptive intent.

In the interest of fully clarifying the record regarding the inventorship of the claimed variety, applicant also submits herewith a corrected application data sheet naming Ira Clevenger as inventor.

Claim Rejection Under 35 U.S.C. §102(b)

The claim in this application stands rejected under 35 U.S.C. §102(b) as being anticipated

by U.S. Plant Patent No. 11,193, "Apple Tree Named 'Fiero'" issued January 25, 2000. By the foregoing amendment, applicant has added substantial additional botanical description of 'Fugachee Fuji,' and has specifically distinguished 'Fugachee Fuji' from 'Fiero' and from 'Fuji.' Applicant believes that the specification as amended obviates the §102(b) rejection, and respectfully requests that the rejection under §102(b) be withdrawn.

Claim Rejection under 35 U.S.C. §112

The claim in this application has been rejected under 35 U.S.C. §112 as not being supported by a clear and complete botanical description of the variety claimed, and for failing to provide a description that is as complete as is reasonably possible. By the foregoing amendment, applicant has added substantial additional botanical description of 'Fugachee Fuji.' Applicant has added description regarding the leaves, flowers, fruit and other botanical characteristics, compared the plant to its parent and to 'Fiero', and provided information regarding the asexual propagation of the variety. Applicant believes that the specification as now amended meets the requirements of §112, and respectfully requests that the rejection under §112 be withdrawn.

CONCLUSION

In light of the foregoing amendment and discussion, applicant believes that this application is now in condition for allowance. Such action is respectfully requested. Any remaining questions or comments may be directed to applicant's representative who signs below.

Respectfully Submitted,

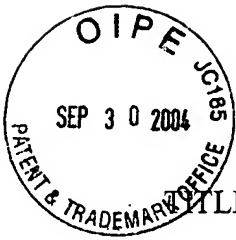
STRATTON BALLEW PLLC

A handwritten signature in black ink, appearing to read "Michelle Bos", with a stylized flourish at the end.

Michelle Bos, PFO Reg. No. 45,499
213 S. 12th Avenue
Yakima, WA 98902
Telephone (509) 453-1319
Facsimile (509) 453-4704

In the drawings:

Please enter new FIG. 6, showing the tree and leaves of the claimed variety. The specification has been amended to include a description of the new illustration. FIG. 6 is provided in duplicate.



SUBSTITUTE SPECIFICATION WITH MARKINGS TO SHOW CHANGES MADE

TITLE OF THE INVENTION

Apple Tree Named 'Fugachee Fuji'

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CROSS-REFERENCE TO RELATED APPLICATIONS

This application claims priority of provisional U.S. application Ser. No. 60/426,974, filed November 15, 2002.

10 STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.

None.

LATIN NAME OF THE GENUS AND SPECIES OF THE PLANT CLAIMED:

15 *Malus pumila*

VARIETY DENOMINATION:

'Fugachee Fuji'

20 BACKGROUND OF THE INVENTION

The ~~new apple tree of the present invention~~ 'Fugachee Fuji' apple tree was discovered as a sport mutation of its parent 'Fuji' (unpatented) tree in a cultivated orchard near Brewster,

Washington in 1998. 'Fugachee Fuji' was asexually propagated at the same location in 1998,
and has been observed to remain stable and true to type over successive generations.

BRIEF SUMMARY OF THE INVENTION

5 The 'Fugachee Fuji' apple tree is distinguishable from its parent 'Fuji' and from other
known and related varieties by its early maturity maturing fruit, and fruit coloration having a
pronounced blush covering seventy to 90 percent of the fruit surface. Fruit of 'Fugachee Fuji' is
further distinguishable by its large size as compared to 'Fuji'. ~~The new apple tree has been~~
~~observed to remain true to type over successive asexually propagated generations.~~

10 'Fugachee Fuji' has been compared to 'Fiero' (U.S. Plant Patent No. 11,193), a similar
'Fuji'-type apple tree. Like 'Fiero,' 'Fugachee Fuji' is an early maturing variety, and its fruit
exhibits an attractive blush overcolor. However, 'Fugachee Fuji' matures even earlier than
'Fiero'. A comparison of 'Fugachee Fuji,' 'Fuji' and 'Fiero' is shown in Table 1:

15 Table 1: Comparison of 'Fugachee Fuji' to 'Fuji' and 'Fiero'

	<u>'Fugachee Fuji'</u>	<u>'Fuji'</u>	<u>'Fiero'</u>
<u>Maturity Date</u>	<u>Late September</u>	<u>Late October</u>	<u>Mid October</u>
<u>Color</u>	<u>70-90% red blush</u>	<u>25-50% red blush or</u> <u>stripe</u>	<u>60-100% red blush</u>

BRIEF DESCRIPTION OF THE PHOTOGRAPHS:

FIG. 1 shows a selection of fruit of 'Fugachee Fuji';

20 FIG. 2 shows a fruit of 'Fugachee Fuji';

FIG. 3 shows a fruit of 'Fugachee Fuji';

FIG. 4 shows a fruit of 'Fugachee Fuji'; and

FIG. 5 shows sectioned fruit of 'Fugachee Fuji'; and

FIG. 6 shows a 'Fugachee Fuji' tree and leaves.

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DETAILED BOTANICAL DESCRIPTION OF THE VARIETY:

The following detailed botanical description of 'Fugachee Fuji' is based on observations made during the 2003 and 2004 growing seasons of trees planted in 2002 at Brewster, Washington and Parker, Washington, USA. Colors, except those colors described in common
10 terms, are set forth in accordance with the Royal Horticultural Society Colour Chart (2001). The botanical characteristics described will vary somewhat depending upon cultural practices and climatic conditions, and can vary with location and season. Quantified measurements are expressed as an average of measurements taken from a number of individual plants of the new variety. The measurements of any individual plant, or any group of plants, of the new variety
15 may vary from the stated average.

Tree

Vigor

Vigorous

Type

Non-Spur

Habit

Spreading

Size

Height, 1.5 m; diameter, 2.7 m

Trunk

Diameter 20 cm at 10 cm above graft union; bark

	<u>texture rough; brown N200D, greyed-orange173B, greyed-orange165A; smooth areas greyed-orange 166A; lenticels 0.2 to 0.8 cm long; lenticel color greyed orange 165D</u>
<u>Branches</u>	<u>Length 120 cm; diameter 4 cm; smooth; greyed-orange 165A; internode length 4 to 6 cm</u>
<u>Winter hardiness</u>	<u>Hardy where tested (Brewster, Washington)</u>
<u>Flowers</u>	
<u>Bud</u>	<u>Quantity per spur 4 to 6; elongated; length 0.9 cm; diameter 0.6 cm; yellow-green 146C; tip red-purple 62A</u>
<u>Flower Color (balloon stage)</u>	<u>White 155D</u>
<u>Flower Size</u>	<u>Diameter 4.3 to 4.4 mm; 4 to 6 flowers per cluster; not showy</u>
<u>Petals</u>	<u>5 per flower; overlapping; length 1.7 cm; width 1.1 cm; margin smooth; upper surface color white 155D; lower surface color white 155D when fully open</u>
<u>Sepals</u>	<u>Length 4 mm; width 2 mm; yellow-green 146C</u>
<u>Pistil</u>	<u>Quantity 5; length 8 to 10 mm; yellow-green 145C</u>
<u>Anthers</u>	<u>Length 5 mm ; pollen abundant, yellow 1A</u>
<u>Bloom period</u>	<u>March 28 to April 20 at Brewster, Washington</u>
<u>Leaf</u>	

<u>Leaf Size</u>	<u>Length 9 cm; width 6 cm;</u>
<u>Length-width ratio</u>	<u>Medium</u>
<u>Margin</u>	<u>Serrate</u>
<u>Shape</u>	<u>Ovate; base rounded; apex acute</u>
<u>Color</u>	<u>Upper surface green 137A; lower surface green 138D</u>
<u>Petiole</u>	<u>Length 4.5 cm; diameter 1 mm; yellow green 145B</u>
<u>Fruit</u>	
<u>Size</u>	<u>Diameter 8.0 cm; height 8.1 cm</u>
<u>Ratio of height to width</u>	<u>Medium</u>
<u>General shape in profile</u>	<u>Globose</u>
<u>Position of maximum diameter</u>	<u>Middle</u>
<u>Crowning at calyx end</u>	<u>Absent or very weak</u>
<u>Depth of eye basin</u>	<u>0.6 cm</u>
<u>Width of eye basin</u>	<u>2.9 cm</u>
<u>Stalk</u>	<u>Diameter 1.5 mm</u>
<u>Depth of stalk cavity</u>	<u>2.0 cm</u>
<u>Width of stalk cavity</u>	<u>4.1 cm</u>
<u>Size of lenticels</u>	<u>Small</u>
<u>Bloom of skin</u>	<u>Present</u>
<u>Ground color of skin</u>	<u>Yellow green 151C</u>
<u>Over color of skin</u>	<u>Red 42A</u>
<u>Amount of over color</u>	<u>70% to 90%</u>

<u>Intensity of over color</u>	<u>Medium</u>
<u>Pattern of over color</u>	<u>Solid flush</u>
<u>Flesh color</u>	<u>White 155D</u>
<u>Seeds</u>	<u>Avg. 6 per fruit; greyed-red 178A</u>
<u>Quantity per cluster</u>	<u>Avg. 3 to 5</u>
<u>Use:</u>	<u>Fresh market</u>
<u>Resistance to known diseases:</u>	<u>None noted</u>
<u>Storageability:</u>	<u>Not yet evaluated</u>

CLAIM

What is claimed is:

A new and distinct ~~variety of Fuji~~ apple tree substantially as shown and described herein.

ABSTRACT

A new and distinct variety of Fuji apple tree (*Malus pumila*) named 'Fugachee Fuji' is disclosed. The fruit of the new variety is characterized by its early maturity and attractive blush coloration.



PATENT
Express Mail No. ET456888971US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Ira Clevenger
Serial No.: 10/713,611
Filed: November 13, 2003
For: APPLE TREE 'FUGACHEE FUJI'
Docket: BR6.P41

COPY

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RESPONSE TO NOTICE TO FILE MISSING PARTS

Sir:

In response to the Notice to File Missing Parts mailed February 18, 2004, applicant submits herewith the declaration and filing fee in the above referenced application.

The enclosed Declaration and Power of Attorney is signed by Ira Clevenger as the inventor of the 'FUGACHEE FUJI'. Shou Shia Wang was originally identified as inventor in the application as filed. It has since been determined that Ms. Wang is not an inventor, and that Mr. Clevenger is in fact the original, sole and first inventor of the new variety. This error was made without deceptive intent.

Any over or under payment of the required fees may be credited or charged to our deposit account no. 50-0269.

Respectfully Submitted,

STRATTON BALLEW PLLC

Michelle Bos, PTO Reg. No. 45,499
213 S. 12th Avenue
Yakima, WA 98902
Telephone (509) 453-1319